Error to Hustings Court of Portsmouth.

F. M. Ambrose was convicted of larceny and he brings error. Affirmed.

R. H. Bagby and *Jno. W. Happer,* both of Portsmouth, for plaintiff in error.

Jno R. Saunders, Atty. Gen., and *J. D. Hank, Jr., Asst. Atty. Gen.,* for the Commonwealth.

WHITE *v.* WHITE.

March 17, 1921.

[106 S. E. 350.]

1. Libel and Slander (§ 94 (5)*)—Plea of Justification to Part Only of Defamatory Charge Not a Complete Defense.—A plea of justification in a slander suit cannot operate as a complete defense if it pleads the truth of a part only of the defamatory charge.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 277.]

2. Libel and Slander (§ 55*)—Defendant May Justify One or More of Separate Libelous or Slanderous Charges.—Where the defamatory matter is divisible and contains several distinct libelous or slanderous charges, defendant may justify one or more of the separate charges.

3. Libel and Slander (§ 94 (5)*)—If Part of Charge Sought to Be Justified Is Actionable in Itself, It Need Not Be of a Different Offense from the Remainder.—On a plea of justification in a slander suit to part only of the defamatory charge, the imputation covered need not be of a different offense from that imputed by the rest of the words charged, provided the defamatory matter is itself actionable.

4. Libel and Slander (§ 94 (5)*)—Justification to a Part of Charge Not in Itself Actionable Not a Good Plea.—In a slander suit a plea of justification to part of the charge not in itself actionable held not a good plea.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 251.]

5. Libel and Slander (§ 94 (5)*)—Charge Covered by Plea of Justification Held Not Severable as Actionable in Itself.—A statement by defendant in slander suit relative to a man's visit to plaintiff, who was a married woman, and that defendant asked her about it, "and she acknowledged it," held not to convey any meaning of insult or tend to violence and breach of the peace, and therefore was not in itself actionable, and hence not severable from the rest of the charge under a plea of justification.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Libel and Slander (§ 94 (4)*)—Plea Neither Denying Plaintiff's Construction Was True Nor Justifying Words as Used in Ordinary Meaning Held Insufficient.—In a slander suit a plea of justification to alleged charge of adultery neither denying that plaintiff's declaration puts the true construction on the admitted words nor justifying them as having been used only in their natural and ordinary meaning held insufficient.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 291.]

7. Libel and Slander (§ 54*)—"Truth" Admissible as Defense Is Truth in Sense Words Charged Ordinarily Understood.—The truth which is admitted as a defense in a slander suit is the truth of the alleged words in substance and in fact in the sense in which they were used and intended to be understood or were reasonably understood in accordance with the usual construction and common acceptation of the meaning of the words as used, in the light of all the surrounding circumstances.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 277.]

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Truth.]

8. Libel and Slander (§ 100 (3)*)—Truth as Defense Not Admissible under General Issue.—Truth of defamatory matter charged in a declaration in a libel suit is not admissible under a plea of the general issue.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 291.]

9. Appeal and Error (§ 867 (2)*)—Illegal Evidence on Which New Trial Was Granted May Be Complained of by Plaintiff in Error.—The rule that on a writ of error to an order setting aside a verdict and awarding a new trial plaintiff in error cannot, to have such order reversed, complain in the appellate court of the admission of illegal evidence, improper instructions or error in the reception of a special plea on which the jury gave no recovery over held inapplicable, where the trial court set aside the verdict on inadmissible evidence establishing the truth of the matter charged in a slander suit.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 560.]

10. Trial (§ 296 (7)*)—Instruction Held Not Erroneous as Imposing Undue Burden of Proof in View of Another Instruction Given.—In a slander suit an instruction for defendant if words covered by plea of justification "and such inferences and insinuations as may be drawn therefrom according to the usual construction and common acceptation of such language" were true held not erroneous in view of another instruction that the words must be construed in their plain and popular sense.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 743.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

11. Libel and Slander (§ 112 (2)*)—Evidence Supporting Finding that Defendant Intentionally Charged Plaintiff with Adultery.—In a slander suit based on a charge of adultery, evidence held to sustain a verdict that the slanderous statements were made by defendant with the intention to charge adultery.

12. Evidence (§ 593*)—Setting Aside Verdict in Slander Case on Ground that Evidence Established Truth of Charge Erroneous Where Such Evidence Inadmissible.—In a slander suit, where a special plea of justification as to part of the charge was improperly admitted, and the truth of the defamatory words was inadmissible under the remaining pleadings, it was error for the trial court to set aside a verdict for plaintiff on the ground that the truth of the words admitted by the special plea was established by the evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 592.]

Error to Circuit Court, Accomack County.

Action by Mamie C. White against Thomas Bernard White. Judgment for defendant, and plaintiff brings error. Reversed and rendered.

S. James Turlington, of Accomac, for plaintiff in error.

Roy D. White, of Parksley, and *Stewart K. Powell,* of Onancock, for defendant in error.

TRIPP *v.* CITY OF NORFOLK.

March 17, 1921.

[106 S. E. 360.]

1. Municipal Corporations (§ 763 (1)*)—City Must Keep Streets in Reasonably Safe Condition.—It is the duty of a city to keep its streets in a reasonably sound, safe, and serviceable condition for public use and travel.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 901.]

2. Damages (§ 26*)—Rule as to Responsibilities of Wrongdoer for Negligent Act Stated.—A negligent person is liable for all the consequences which naturally flow from the wrongful act, regardless of whether they could have been reasonably anticipated; the test being whether, viewing the case retrospectively, the consequences were so improbable or unlikely to occur that it would not be fair and just to charge a reasonably prudent man with them.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 375.]

3. Municipal Corporations (§ 800 (1)*)—Rut in Street Held Proximate Cause of Injuries to Pedestrian.—Negligence of city in permitting rut in street held the proximate cause of injuries to pedestrian

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.